

The legal problem of Islamic dress code enforcement in Chechnya

Determination of a legal status of the mandatory Islamic dress code policy in Chechnya and evaluation of its legitimacy with reference to the domestic legislation of the Russian Federation

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To My Mom and Family

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1 Introduction

1.1 Background of the research question

Before getting started and move to the actual research, I want to introduce some facts and a background of my research topic and to explain why I consider it important to raise this issue at my thesis project.

In June 2010 two young women were walking down the main street in Grozny, the capital city of the Chechnya, Russian Federation. The day was very hot and they wore light blouses and skirts a little below their knees. Both women were without traditional Islamic headscarves. Suddenly a car with tinted glass windows stopped next to them. The side window roll down and one of the women saw a gun barrel stare in her face. Then the stranger shot. Luckily, he used not bullets, but a paintball gun and pellets filled with paint ¹. But as one of the victims of this attack explained to journalists and human rights activists later she thought a real gun was being aimed at her. She said that this incident brought her pain, humiliation and suffering and now she is too scared to leave the house without a proper Islamic dress and a headscarf ². At least one victim of these attacks reportedly was hospitalized. As human rights activists and newspapers reported, in June 2010 dozens of women in Chechnya and especially in the capital city Grozny were targeted in paintball attacks and other acts of violence because of their “improper” and “too revealing” clothing ³. The attacks attracted lot of attention from major media sources, such as New York Times ⁴,

¹ Human Rights Watch *You Dress According to Their Rules* report / <http://www.hrw.org/sites/default/files/reports/chechnya0311webwcover.pdf> / [Visited 15 April 2014];

² BBC Europe *Chechnya women's Islamic dress code: Russia blamed* / 10 March 2011 / <http://www.bbc.co.uk/news/world-europe-12705300> / [Visited 15 April 2014];

³ Human Rights Watch *Russia: Chechnya Enforcing Islamic Dress Code* / 10 March 2011 / <http://www.hrw.org/news/2011/03/10/russia-chechnya-enforcing-islamic-dress-code> / [Visited 15 April 2014];

⁴ New York Times *Chechnya: Women Forced to Wear Head Scarves, Report Says* / 10 March 2011 / http://www.nytimes.com/2011/03/11/world/europe/11webbrfs-Chechnya.html?_r=1& / [Visited 15 April 2014];

Bloomberg ⁵, USA Today ⁶, BBC ⁷; and from human rights activists, such as Human Rights Watch ⁸, Open Democracy ⁹ and Peace Women ¹⁰, which expressed strong concerns about this normatively rather problematic practice.

These attacks came several years later after the beginning of a “campaign” for a compulsory Islamic dress code for all women living in Chechnya. As part of this “campaign” women presumably to be prohibited from working in the public sector without a headscarf and proper clothing ¹¹, while the education authorities of the Grozny State University and some other universities and schools ¹² in fact adopted regulations that require a mandatory wearing of a headscarf by all female students at their premises. Some activists even reported that they were denied access to the university facilities without a headscarf despite the fact that they were not Muslims ¹³. According to Human Rights Watch report ¹⁴ and several other media reports, throughout 2009-2011 the authorities broadened the Islamic dress code policy to other public places, including entertainment venues, cinemas, streets, etc.

⁵ Bloomberg *Chechen Leader Enforces Islamic Dress Code, Rights Group Says* / 10 March 2011 / <http://www.bloomberg.com/news/2011-03-10/chechen-leader-enforces-islamic-dress-code-rights-group-says.html> / [Visited 15 April 2014];

⁶ USA Today *A growing Islamic identity for Chechnya* / 22 March 2010 / <http://usatoday30.usatoday.com/news/world/story/2012-03-21/chechnya-islamic-revival/53693048/1> / [Visited 15 April 2014];

⁷ BBC *Chechnya women's Islamic dress code: Russia blamed*, *ibid supra*;

⁸ See, f.ex., here: Human Rights Watch *You Dress According to Their Rules* press-report / 10 March 2011 / <http://www.hrw.org/en/reports/2011/03/10/you-dress-according-their-rules-0> / [Visited 15 April 2014];

⁹ Open Democracy Liza Kazbekova *Chechnya's fashion dictator* / 18 July 2012 / <http://www.opendemocracy.net/od-russia/lisa-kazbekova/chechnya%E2%80%99s-fashion-dictator> / [Visited 15 April 2014];

¹⁰ Peace Women *Enforcement of Islamic Dress Code for Women in Chechnya* / 19 November 2010 / http://www.peacewomen.org/news_article.php?id=2424&type=news / [Visited 15 April 2014];

¹¹ Liza Kazbekova *Chechnya's fashion dictator*, *ibid supra*;

¹² Bloomberg *Chechen Leader Enforces Islamic Dress Code, Rights Group Says*, *ibid supra*;

¹³ Roman Sirhovski *Chechnya Imposed The Laws Of Modesty* / Antiterror / 11 March 2011 / http://www.antiterror.kz/chechnya/news_2011-03-11-22-03-51-380.html / [Visited 15 April 2014];

¹⁴ Human Rights Watch *You Dress According to Their Rules* report, *ibid supra*;

I shall discuss the Islamic dress code policy and how it spread more detailed in a corresponding chapter of my thesis, as in this introductory chapter I only want to present a brief background of my research question without paying much attention to the details to be examined in subsequent chapters.

1.2 Problem statement and objectives of the thesis project

I broadly defined my research area as a legal analysis of legitimacy of the Islamic dress code policy in Chechnya based on the federal and regional legislation of the Russian Federation. More precisely, my research question is:

“What is the legal status of the Islamic dress code policy in Chechnya within the framework of a domestic legislation? Is the policy in accordance with federal legislation of the Russian Federation, or may it be regarded as exceeding the authority of the Chechen Republic, or is a case of a legislative gap?”

In my thesis I focus only on legal aspect of the problem and investigate whether the Islamic dress code policy: 1) was legally enforced by Chechen authorities in a form of law which is mandatory for all (or one particular group, for example, state servants) women in Chechnya; 2) or was legally enforced, but in a form of administrative regulation issued by university or school authorities, employer, etc; 3) or may be defined as a quasi-legal “campaign” run by Chechen authorities, but in a form of verbal oppression and orders which are not based on laws; 4) or neither, and the policy is illegal and run by radical Islamic groups without any legal basis at all. I consider it very important to ‘investigate’ whether the Islamic dress code policy was actually adopted as a local law or an administrative act mandatory for employees, students, etc. The answer to that question is undoubtedly important for the evaluation of the headscarf policy, since it may help to define the legal status of such a regulation, or to put it differently its legitimacy. When a year ago I started to think about my thesis research question and collected some newspaper articles and NGO reports on the dress code issue in Chechnya, for me it appeared quite obvious that the policy was in fact implemented legally. I found that in most articles and reports facts were presented in such a way to make an impression that the Islamic dress code policy in Chechnya was adopted through a law or an administrative regulation, although authors hardly managed to cite any legal source establishing it. However, at the beginning I supposed that my sole objective

would be to analyze the law adopting the Islamic dress code policy within the framework of a domestic legislation. However, when I was gathering information with the main aim to find such a law (or edict, order, regulation – something), I was hardly able to find any. Because of that contradiction I decided to change the focus of my research. I decided to pay more attention to a process of expansion of the policy within the territory of Chechnya, presenting my findings on this issue. I also consider it necessary to italicize the fact that legislation regarding the Islamic dress code policy in Chechnya actually is extremely poor. One sub chapter is dedicated to my findings on this issue. Thus, this thesis project is more or less a comprehensive research of the Islamic dress code policy in Chechnya, investigating where and when it originated, how it was enforced and to what extent it can be considered as lawful.

Although in my thesis I analyze only domestic legislation and not international one, it is important to mention that in a case-law of the European Court of Human Rights (hereafter – the ECHR), for instance, *Sahin v. Turkey*¹⁵, the Court paid a great deal of attention¹⁶ to the power and competence of the university authorities to adopt a hijab ban, while the plaintiff, Leila Sahin, also used the argument of the university exceeding its competence as part of her argumentation.

I shall also examine whether those who implemented the Islamic dress code policy in Chechnya had the requisite authority and competence in accordance with a domestic legislation to do so. The Chechen Republic is a part – or a so-called ‘subject’ in accordance with Russian legal terms – of the Russian Federation and is obliged to comply with Russian federal legislation, which belongs to the civil law family and has a clearly defined hierarchy of legal norms. However, ‘subjects’ of the Russian Federation have some degree of independence to balance their legislation with local customs, that is to say the right to implement local norms within their competence and – as a general rule – in compliance with federal legislation. Thus, I shall also discuss the issue of jurisdiction of local authorities in order to

¹⁵ The case of *Sahin v. Turkey* / app. no. 44774/98 / <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70956> / [Visited 16 April 2014];

¹⁶ See: para 78-81, 84, 96 *Sahin v. Turkey*, *ibid supra*;

establish whether they had an authority to adopt the dress code policy or not. (However, the same question is equally applicable to a university or school board, an employer, etc.) Did they adopt a controversial, but legally acceptable local legislative norm based on traditional cultural characteristics of the region or did they come into conflict with federal laws?

Summing up: The purpose of this thesis project is to analyze the legal status of the Islamic dress code policy and elucidate whether it is legitimate (i.e. in compliance with the domestic legislation) or not.

I intentionally limit the scope of my research to the domestic legislation and there are strong reasons for that. Firstly, there is a lack of accurate information regarding the Islamic dress code policy in Chechnya. Some reports and brief articles based on “victims” testimony were published, but to my knowledge no detailed legal analysis ever took place. (I shall for the sake of brevity refer to persons involuntarily subjected to enforcement of dress code policies as “victims” without thereby prejudging the legitimacy of such policies.) While doing preliminary research of the issue, I came to conclusion that there is a great deal of confusion regarding the legal status of the policy, and this needs to be clarified. Secondly, an answer to the question about legitimacy may seem quite obvious as applied to the international human rights law. But in this particular situation, when we are talking about one minor local norm, it may be much more helpful to appeal to the domestic level rather than international one, and find a controversial norm or gap in the domestic legislation, so that it can be easily improved at the domestic level. Besides, the answer may sometimes be quite controversial and, as the ECHR indicated in *Sahin v. Turkey*, may strongly depend on the domestic legislation¹⁷. In the *Sahin* case the ECHR used several criteria to define whether the ban on Islamic headscarf at the university facilities was in compliance with The European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸ or not. In particular, it underpinned that restrictions should be, firstly, “prescribed by law”; sec-

¹⁷ See, for instance, para 78-81 of *Sahin v. Turkey*, *ibid supra*;

¹⁸ *The European Convention for the Protection of Human Rights and Fundamental Freedoms* / CETS no: 005 / 3 September 1953 / <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG/> [Visited 18 April 2014];

only, “necessary in a democratic society”; and thirdly, undertaken “in order to pursue a legitimate aim” (protection of public safety, public order, health, morals, rights and freedoms of others). While all these aspects are equally important for a legal evaluation, in my thesis I focus only on the first aspect, i.e. on “prescribed by law” criteria, otherwise my thesis paper would be overburdened.

And lastly, speaking about the ECHR case-law, it is important to mention that until the present time no complaints have been submitted regarding the mandatory Islamic dress code in the Chechen Republic. Therefore the ECHR had no possibility to consider the issue of admissibility of such claims and to decide on merits. This obviously means that victims need to exhaust domestic methods of protection (remedies) at first and only then they can raise the issue before the ECHR. However, it appears that the issue of the mandatory Islamic dress code in Chechnya hasn’t been challenged in domestic courts yet. This is probably my main argument for an analysis based on the domestic legislation. Victims, in case they decide to make a claim about dress code policy in Russian courts, need to present legal arguments against it, and it is generally known that Russian courts when deciding, cases rarely apply international norm directly. More often domestic courts try to avoid international norms, substituting them with relevant domestic regulations.

1.3 Motive of study

The importance of the research question was discussed in previous sub chapters, and I assume that the reasons for addressing the issue are made sufficiently clear. However, I can add few additional arguments. Although the issue never had been examined by the ECHR, in 2010 the enforcement of headscarves and other problems regarding discrimination against women in Chechnya came to the attention of the Council of Europe. In a report presented by the rapporteur on human rights violations in the Northern Caucasus the Committee for Legal Affairs and Human Rights critically assessed the human rights situation in the region. According to this report, the Committee has materials about “degrading treatment suffered by women following the introduction of rules directly dictated by the regime

run by the current president of the Chechen Republic”¹⁹. The dress code was highly criticized by famous human rights activist Natalya Estemirova²⁰. This practice was also criticized by the USA Commission on International Religious Freedom, which found a violation of religious rights and freedoms in Chechnya. This report attracted attention of Chechen authorities and the head mufti [scholar who may authoritatively interpret and expound of Islamic law and acts as a head of Muslim community in Russian Federation – author’s commentary] of the Chechen Republic made a statement, assuming that all constitutional rights and freedoms are respected in Chechnya²¹. Besides, Asma Jahangir, former United Nations Special Rapporteur on freedom of religion or belief, and her predecessor, Abdelfattah Amor, have both criticized rules that require the wearing of religious dress in public²² and described them as “legislative and administrative actions which typically are incompatible with international human rights law”²³.

I submit that this evaluation is largely well grounded. Enforcement of the Islamic dress code may be regarded as a violation of women’s rights to privacy and personal autonomy, freedom of expression, freedom of religion, thought and conscience. It also may be regarded as a form of a gender-based discrimination and discrimination based on a religious belief since not only Muslims are required to wear a hijab. Implementation of a mandatory

¹⁹ Dick Marty *Legal Remedies for human rights violations in the North-Caucasus region* / Doc. 12276, Committee on Legal Affairs and Human Rights / PACE / 4 June 2010 / http://www.assembly.coe.int/CommitteeDocs/2010/20100531_caucasus_E.pdf / [Visited 20 April 2014];

²⁰ Кавказский Узел *Распоряжение о дресс-коде для чиновников в Чечне выходит за рамки законодательства РФ, считают эксперты* / The Caucasian Hub *The dress code regulation is outside the scope of the legislation of the Russian Federation, experts say* / 17 February 2011 / <http://www.kavkaz-uzel.ru/articles/181163/> / [Visited 18 April 2014];

²¹ Абдул Асиев *Дресс-код по-чеченски* / Abdul Asiev *Dress-code for Chechnya* / 13 April 2012 / <http://kavpolit.com/dress-kod-po-chechenski/> / [Visited 19 April 2014];

²² Peace Women *CHECHNYA: Enforcement of Islamic Dress Code for Women in Chechnya* / 19 November 2010 / http://www.peacewomen.org/news_article.php?id=2424&type=news / [Visited 18 April 2014];

²³ See: UN Economic and Social Council *Civil and political rights, including the question of religious intolerance. Report of the Special Rapporteur on freedom of religion or belief Asma Jahangir* / E/CN.4/2006/5 / 9 January 2006 / <http://www2.ohchr.org/english/issues/religion/docs/report2006.pdf> / [Visited 20 April 2014];

Islamic dress code for pupils and students also violates female students' right to education since they have to comply with the requirement or leave an educational institution. This problem is particularly important when we are speaking about the higher education level since students are less protected in comparison with school pupils who have a right to a primary compulsory education ²⁴. It also violates women's right to work – with identical argumentation. Moreover, the dress code policy imposed within some particular territory, like in our case the territory of the Chechen Republic, may also force inhabitants to change a place of residence, creating a noxious practice of pressing out inhabitants with different beliefs and violating a right to freedom of movement right ²⁵. This situation can promote injustice and a sense of isolation for women. It may exclude them from education and working life ²⁶ and lead to an economic and social instability in the society.

1.4 Outline

My thesis starts with an introductory chapter covering a brief background explanation, stating the problem to be addressed and the objectives which I set for myself, and indicating my personal attitude toward the question of importance of the research problem. Then I present an outline of the paper, methodology and clarify terms which I used. The first substantive chapter of the thesis is divided into three parts. In the first one I briefly explain where the Islamic dress code policy in Chechnya originated and how it spread, while in the second sub chapter I try to investigate whether it was legally adopted or not. As a starting point I use some reports and newspaper articles in order to establish a background of the Islamic dress code policy. I then address the legal regulations which I have found to be quite weak and obscure. This two sub chapters compose the basis for a future legal analysis. In the third sub chapter I discuss the response of Chechen and Russian authorities on

²⁴ *The Convention on the Rights of the Child* / UN General Assembly / Document A/RES/44/25 / 12 December 1989 with Annex / <http://www.hrweb.org/legal/child.html> [Visited 21 April 2014];

²⁵ Article 2 of the Protocol No. 4 to *The Convention for the Protection of Human Rights and Fundamental Freedoms* / 16 September 1963/ <http://conventions.coe.int/Treaty/en/Treaties/Html/046.htm> [Visited 21 April 2014];

²⁶ Tordis Borchgrevink *The Hijab Debate and The Liberal Dilemma* / Kilden, 29 May 2008 <http://eng.kilden.forskningsradet.no/artikkel/vis.html?tid=53211> [Visited 21 April 2014];

the dress code issue. The second chapter is composed of four sub chapters. I start with a brief presentation of the legal system of the Russian Federation, divided into Federal and Regional levels, and describe the structure of the country. The second sub chapter is dedicated to the Stavropol region case regarding the issue of wearing headscarves in state educational institutions. In the third and fourth sub chapters issues of a mandatory dress code for state civil servants and secularism in Russian Federation are examined. Generally speaking, the second chapter is a core of my research, where I present my legal evaluation of the dress code policy based on an analysis of the domestic legislation, both federal and regional. Lastly, I present my conclusions and findings.

1.5 Methodology and terminology clarification

The research of my thesis project is principally based on a desk study of domestic legislation of the Russian Federation. As the primary source of my thesis I analyze federal and regional legislation of the Russian Federation, sub legislative acts of local authorities, orders and instructions and compare these using a comparative method and a method of legal analysis. As my thesis research is based primarily on the legal perspective, domestic legislation obviously was the main and most important source. In my research I used several main sources of authentic Russian legal texts which are accessible online in the Russian language, such as Kommersant and Garant law databases and “Rossiyaskaya Gazeta”– the source of official publications of laws that have recently come into force. In my research I analyzed authentic legal sources in the Russian language; all translations were produced by me. Some main legal texts such as the Constitution of the Russian Federation were officially translated on the English language. Where official translations are available, I use the English-text, however always analyzing it in close connection with Russian-language version to avoid misunderstanding. I use some media sources reporting about some particular legal acts when no official publication ever took place or I was unable to find an official source of publication. I also use reports, interviews and articles while collecting information about the Islamic dress code policy in Chechnya. There are some reports and interviews with victims made by Human Rights Watch which I found very useful for my research. These interviews help me pinpoint the problem and investigate where the policy originally came from. Media analysis as well as analysis of the statements and testimony of

victims and authorities help me fill my research with some examples, investigate ‘shady sides’ of the Islamic dress code policy where possible and explain where and when it actually started. Because the policy emerged recently and no proper scholarly investigation has taken place, there is a lack of relevant legal and scholarly literature on the issue. Thus, a significant part of information gathering was inevitably based on newspaper articles published online. I have tried to use well-known and trustworthy media sources to be sure that the information they produced is of a high credibility. However, it is obvious that a lack of internal qualitative control mechanisms exists when we are speaking about media, and newspapers are placed under lesser demands regarding objectivity and double-checking of facts.

The thesis also builds on scholarly articles, various UN documents and commentaries and on case-law of the ECHR (case study method), which generally is not specifically applicable to the legal analysis of the domestic legislation, but may help me to set out on a right track and build up argumentation. By now I found several cases which are useful, most prominently: the above mentioned *Sahin v. Turkey*²⁷, *Dahlab v. Switzerland*²⁸ and *Eweida v. Britain*²⁹. All these cases raise the question about religious symbols in public places or working environment, though the context is different. For instance, in *Sahin v. Turkey* the plaintiff, a med student Leyla Sahin, questioned the necessity of the hijab ban in the university as a measure necessary to preserve secularism. At the end the ECHR adopted a pattern which allows a state party to put limitations if they are prescribed by neutral norms and justified by the necessity criteria grounded on a state party’s customs, historical

²⁷ *Sahin v. Turkey*, *ibid supra*;

²⁸ The case of *Dahlab v. Switzerland*, app. no. 42393/98 / <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-22643> [Visited 27 April 2014]

²⁹ The case of *Eweida and others v. Britain* case, no. 48420/10; 36516/10; 51671/10; 59842/10 / <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881>

background³⁰, current social situation, etc. However, in this case I am mostly interested in the argumentation related to “prescribed by law” criteria.

And lastly, in my research I examine some academic sources such as scholarly books and articles which helped me to build a strong theoretical background for my thesis. These are, firstly, academic sources analyzing the legal system of the Russian Federation, such as *The Theory of State and Law* edited by Mikhail Marchenko and a team of Moscow State University Law Faculty³¹, *The Theory of State and Law* by Babayev V.K.³² and more specified *Law and Legal System of the Russian Federation*³³. I also found several scholarly sources which cannot be directly applicable to my research question and were not directly quoted in the thesis, but were analytically useful to have a better understanding of a religious dress code dilemma from different perspectives. For instance, in *Religious freedom in the liberal state*³⁴ authors discuss the question whether a liberal state can be truly neutral toward religious practices and to what extent it should interfere with the issue. In the *Religious Symbols in Public Functions: Unveiling State Neutrality*³⁵ authors analyze the position and meaning of religious symbols, including religious dress, in different life-situations (school, working environment, etc.) and examine the issue within the framework of The European Convention on Human Rights. The *Manual on the Wearing of Religious Symbols in Public Areas*³⁶ is a very useful collection of case-law examples from various countries,

³⁰ See, f.ex., Boustead Kathryn *The French Headscarf Law Before the European Court of Human Rights* / http://www.law.fsu.edu/journals/transnational/vol16_2/Boustead.pdf [Visited 10 April 2014];

³¹ Marchenko Mikhail *The Theory of State and Law* / Moscow: Zertsalo, Moscow State University Press, 2005;

³² Babayev V.K. *The Theory of State and Law* / 2nd edition / Moscow: Jurist, 2006;

³³ William Burnham, Gennadii Mikhailovich Danilenko, Peter B. Maggs *Law and Legal System of the Russian Federation* / Juris Publishing, Inc., 2009;

³⁴ Rex J. Ahdar, Ian Leigh *Religious freedom in the liberal state* / Oxford University Press, 2005;

³⁵ Hana M. A. E. Van Ooijen *Religious Symbols in Public Functions: Unveiling State Neutrality* / Intersentia Uitgevers N.V., 2012;

³⁶ Malcolm David Evans *Manual on the Wearing of Religious Symbols in Public Areas* / Council of Europe, 2009;

while in *Human Rights and Religion: The Islamic Headscarf Debate in Europe*³⁷ this aspect was examined more detailed and focused on the hijab-issue. Legal perspective of the issue was also analyzed in *Islam, Europe and Emerging Legal Issues*³⁸ and *Freedom of Religion: UN and European Human Rights Law and Practice*³⁹.

Where Russian-language sources were used, footnotes include author and title of the source first in Russian and then in English.

As to terminology, all terms in this thesis project generally are to be understood in their ordinary sense. However, there are several terms which are especially typical for the Russian legal system and which can be used differently or have different meaning in Western legal tradition. First of all, by 'civil law system' I mean the Romano-Germanic law system – the legal system used in the countries of continental Europe. The civil law system is to be distinguished from the common law system of the Anglo-American countries. The term 'civil law' is also commonly used to distinguish private law from public law, however in the thesis I use it to refer to Romano-Germanic law family. The term 'subject' is also widely used in the thesis. This term was adopted by the Constitution of the Russian Federation as a general term to describe territorial units into which the country is subdivided. Russia is divided into 83 (or 85 if one includes Crimea and Sevastopol) territorial units or 'subject', which are by general rule equal, though they may have sharp distinctions regarding size, population, etc. To avoid misunderstanding this term is used in the paper in inverted commas.

³⁷ Dominic McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* / Hart Publishing, 2006;

³⁸ W. Cole Durham *Islam, Europe and Emerging Legal Issues* / Ashgate Publishing, Ltd., 2012;

³⁹ Paul M. Taylor *Freedom of Religion: UN and European Human Rights Law and Practice* / Cambridge University Press, 2005;

2 Determination of a legal status of the mandatory Islamic dress code policy in Chechnya

2.1 Spreading of the mandatory Islamic dress code in Chechnya

As I previously mentioned, the Islamic dress code policy in Chechnya is a recently emerging issue and no detailed scholarly investigation has taken place until the present day. There is a significant lack of accurate legal information on the issue and most reports are based on newspapers articles or at best on victims' testimony. It is obvious that for my legal analysis it is crucial to establish (or at least try to do so) clear facts based on legal sources. In this part of my thesis I shall present information from various sources available such as media articles and NGO reports in order to establish facts to be analyzed in subsequent chapters of the thesis. A significant part of information gathering was based on articles and reports published online, reports and on victims and witnesses' testimony. I found it possible that involved state officials prefer to blur and hide information regarding such delicate and controversial issue, especially in situation when they themselves presumably sanctioned it.

It was approximately seven or eight years ago when in Chechnya female state civil servants, university and school students were first instructed to wear traditional shawls or kerchiefs. It is still unclear when exactly this dress code policy had started and what legal norms were issued in order to justify it as many victims reported that they received only verbal instructions and never saw any written legal acts on the issue. "Our boss simply called us in and informed us that the president had ordered all women to wear headscarves" – a pediatrician at hospital in Grozny told to journalists ⁴⁰.

Ramzan Kadyrov's first public attempt to exercise moral policing of Chechen women was carried out in 2006. This year he made his first public calls regarding the necessity for

⁴⁰ Open Democracy Liza Kazbekova *Chechnya's fashion dictator*, *ibid supra*;

Chechen women to cover their hair ⁴¹. In an interview given to “Komsomolskaya Pravda” newspaper in September 2008, president Kadyrov made his position regarding a dress code clear, literally saying that “a woman should be considered as property owned by a man. Here, if a woman does not behave correctly, her husband, her father and her brother are responsible. In our tradition, if a woman is unfaithful, she is killed... It can happen that a brother kills his sister or a husband kills his wife. Our boys go to prison for that... As President, I cannot allow people to be killed. So let us make sure that women do not wear shorts” ⁴².

According to Human Rights Watch report, already in 2007, shortly after becoming the president of the republic, Kadyrov publicly announced that all women working for state bodies and institutions had to wear headscarves. In the same year he presumably issued an edict that banned women without a headscarf from entering state buildings. The edict is presumably still followed today ⁴³. Approximately the same year local education authorities reportedly introduced dress code for female students in schools and universities, including Chechen State University, which includes headscarf. Those who tried to resist were simply denied entry to facility. However, human rights activists reported ⁴⁴ that no legal grounds for the new requirement were adopted and it seems that only some informal verbal instructions were given. As a result women were not allowed to enter government buildings without headscarves, long sleeves and skirts below the knee, while girls and teenagers could not attend schools or universities without a headscarf. Women were not allowed to enter movie theaters or concert halls or often even to be outdoors without head scarves ⁴⁵. In 2007 The

⁴¹ Human Rights Watch *Virtue Campaign on Women in Chechnya under Ramzan Kadyrov* / <http://www.hrw.org/news/2012/10/29/virtue-campaign-women-chechnya-under-ramzan-kadyrov> [Visited 1 April 2014];

⁴² Committee on Legal Affairs and Human Rights Dick Marty *Legal remedies for human rights violations in the North-Caucasus Region*, ibid supra;

⁴³ See, f. ex., BBC *Chechnya women's Islamic dress code: Russia blamed*, ibid supra;

⁴⁴ Human Rights Watch *Virtue Campaign on Women in Chechnya under Ramzan Kadyrov*, ibid supra;

⁴⁵ New York Times *Chechnya: Women Forced to Wear Head Scarves, Report Says*, ibid supra;

Union of Non-governmental organizations of Chechnya reported that they were forced to move their office to another building because of a refusal of one female employee to wear a headscarf. A mandatory headscarf policy was presumably introduced by a Minister for the Press and National Relations of the Chechnya. The Union was forced to move because of a refusal to comply with the policy, and as building administration and security guards stated the removal was sanctioned by the Minister for the Press and National Relations himself⁴⁶.

The first paintball attacks took place in 2010. I did not manage to find any earlier allusion to the incidents, but the 2010 attacks were widely reported by many international media. A video record of one attack was also published on YouTube, but soon was removed and now is unavailable for browsing. “Police in Chechnya are reportedly firing paintball pellets at women who do not wear headscarves” – Fox News reported. “A car carrying men in military uniforms slowed down to approach us, one started filming on his mobile phone, and when they sped away we noticed paint all over our clothes,” a victim of the dress code attack told to journalists. According to victims and witnesses, multiple similar incidents took place in 2010, starting presumably in the Chechen city of Gudermes⁴⁷. According to the NGO Memorial human rights activists, local police were behind these attacks⁴⁸. Local police or security forces were reportedly involved, as many victims argued that men in military uniforms were firing the shots. However, this is not a certain conclusion because military uniforms can be bought and worn by anyone and this fact cannot be regarded as a clear evidence of police or security forces involvement. At the same time, commenting on the issue on the Grozny television station on 3 July 2010, Ramzan Kadyrov expressed his support of those carried out paintball attacks. In the same year in the city of Gudermes hundreds of announcements were distributed at local streets, urging local women to wear head-

⁴⁶ See: Кавказский Узел *Союз неправительственных организаций Чечни выгнали из Дома печати в Грозном* / The Caucasian Hub *The Union of Non-governmental organizations of Chechnya was expelled* / 17 December 2007 / <http://chechnya.kavkaz-uzel.ru/articles/129083> [Visited 20 March 2014];

⁴⁷ Fox News *Chechen Police Reportedly Paintballing Women With Uncovered Hair* / 18 June 2010 / <http://www.foxnews.com/world/2010/06/18/chechen-police-reportedly-paintballing-women-uncovered-hair/> [Visited 10 March 2014];

⁴⁸ BBC *Chechnya women's Islamic dress code: Russia blamed*, *ibid supra*;

scarves. “Our dearest sisters, – it was said in announcements, – We want to remind you of a moral obligation [...] of each Chechen woman to wear a headscarf. [...] Today we are throwing you with paint, but it was only a warning. Do not push us for taking more persuasive measures!”⁴⁹.

In 2010 during the Ramadan several other incidents took place. A group of men claiming to represent the Chechen Republic’s Islamic High Council handed out brochures with a detailed description of appropriate Islamic dress for females. These men soon were joined by aggressive passers-by who started to humiliate women without headscarves. It seems that at least one similar attack was carried out by local policemen. As the victim explained, she was stopped by three police officers in Grozny who started to humiliate her because of her “immodest” clothing and threatened her with ‘big problems’ if she refused to comply with the Islamic dress code policy. In another case several armed men in black uniforms were involved in similar actions. Although some NGOs conclude that local military personnel or law enforcement officers were undoubtedly involved, except for the above mentioned case involving three policemen, it is impossible to make an incontestable conclusion on the issue. As I already said, camouflage uniforms may be freely bought by anyone in shops for hunters or special stores selling uniforms. And it appears that those involved in attacks never shown any police ID cards or other documents confirming that they are acting as state officials.

In May 2011 female school pupils were informed that they were expected to wear long skirts and a headscarf. “The order had come from the top and there was nothing anyone could do about it”, – that seems to be a common parental view on this situation. Several months later female state employees were ordered to wear “modest” clothing and a headscarf, some of them reportedly were even banned from entering governmental buildings without proper clothing. Approximately at the same period of time a presumably verbal instruction was given to local television authorities that all female newsreaders and pre-

⁴⁹ See, f.ex., Кавказский Узел *В Гудермесе развешаны объявления с призывом к девушкам носить платки* / The Caucasian Hub *Announcements urging local women to wear headscarves were distributed at Gudermes* / 11 June 2010 / <http://www.kavkaz-uzel.ru/articles/170039/> [Visited 10 March 2014];

senders should be removed from TV screens. However, a month later the ban was dismissed⁵⁰.

As journalists and human rights activists reported, a situation with dress code is fluctuated with a tendency to become more or less strict depending on the current political situation. In May 2012 it seems there was an attempt to make it even stricter, when female teachers and professors at local universities were told to wear not a headscarf, but a full hijab which covers their necks⁵¹.

2.2 Legal implementation of the mandatory Islamic dress code policy in Chechnya

The head of Chechen Republic Ramzan Kadyrov in the 19 February 2011 interview with Bloomberg said that he had issued instructions for the dress code to protect Chechen women's "modesty" in compliance with Russian laws. "If we tell them to respect a certain dress code, then they must do so," – Kadyrov said. "We have the right to do so; we are applying the laws of the Chechen Republic, which don't contradict those of the Russian Federation"⁵². Although president Kadyrov did not specify which law he was talking about, most likely it was the edict № 04/27 issued on 25 January 2011 by the Administration of the Head and the Government of the Chechen Republic⁵³. The order stated that male and female state civil servants are obliged to comply with dress code appropriate to the Vainakh ethics [an unwritten moral norms, customs and traditions of proper behavior for Chechen people – author's commentary]. A scanned copy of this order was published online (see Annex 1). According to the edict, a dress code for male state servants includes a suit with a tie, on Fridays – a traditional Muslim dress; for females – a headscarf, a dress or a skirt belong knee and minimum a three fourth sleeve blouse or top. The edict was signed

⁵⁰ Open Democracy Liza Kazbekova *Chechnya's fashion dictator*, ibid supra;

⁵¹ Open Democracy Liza Kazbekova *Chechnya's fashion dictator*, ibid supra;

⁵² Bloomberg News *Chechen Leader Enforces Islamic Dress Code, Rights Group Says*, ibid supra;

⁵³ See Annex I. The edict was never officially published;

by the Head of the Administration of the Head and Government of the Chechen Republic. As I already said, a scanned copy of the edict was published by local media. However I failed to find this edict published in a repository of legal acts issued in the Chechen Republic. Moreover, I use a term ‘edict’ simply because the president Kadyrov used it. The legal status of this document is under a question.

The situation is more definite as to a dress code for school pupils and students. In 2013 the Government of the Chechen Republic issued a regulation №168 of 11 July 2013 “On approval of general requirements regarding a school uniform and appearance of students of states and municipal educational institutions of Chechen Republic”⁵⁴. The preamble of this document states that it aims to remove social, financial and religious differences among pupils. The complete list of requirements shall be further detailed and established by each educational institution with consultations with school board, Parent-Teacher Association, etc. However, according to this regulation, daily uniform for female school students shall consist of long dress or a skirt, jacket or vest, non-transparent blouse or top and a headscarf (however, students are not allowed to wear a nikab which covers the whole face). A curious thing about this regulation is that the last paragraph of it underlined that students’ dress code and appearance “shall reflect a secular character of the educational institution”. I may explain this controversy, surmising that authors of the regulation №168 took a model text which presumably was prepared by the Ministry of Education of the Russian Federation and supplemented it with a provision regarding a headscarf, but failed to exclude articles which are obviously contradictory.

While the situation is more or less clear with respect to school pupil, it still remains unclear what legal measures were undertaken by university authorities in order to justify the Islamic dress code policy in local universities. The provost of the Chechen State University in an interview stated that Chechen females “were covered their head from the very beginning of the Chechen nation”, adding that he wants the Chechen State University “with

⁵⁴ The regulation №168 of 11 July 2013 “On approval of general requirements regarding a school uniform and appearance of students of states and municipal educational institutions of Chechen Republic” / “Vesti Respubliki” №141 (2074) of 26 July 2013. The Russian-language text is available here: <http://www.rg.ru/2013/09/11/chechnya-post168-reg-dok.html>

a Chechen face”⁵⁵. According to NGO Memorial new rules are applicable not only to Muslims, but to all visitors of the university. When one non-Muslim staff member of Memorial tried to enter the building without a headscarf, she was stopped by local guard member who asked her to put a headscarf on. The guard said that according to an order of the president of the University a headscarf is mandatory within the premises of the University both for Muslims and non-Muslims. The Memorial staff member asked him to show her this order, but instead was taken to the rector’s office where she was orally informed by staff members that a mandatory dress code policy was implemented by a decision of the academic council of the University. However, university officials refused to show her a written decision on the issue⁵⁶. Anyway, for the purpose of this thesis I accept a fact that the dress code was implemented by a decision of the academic council of the university as long as this information was given to Memorial by the university staff.

And lastly, it seems that Chechen authorities sponsored several projects with the aim to promote the headscarf among the female population. For instance, in August 2012 project sponsored by the Ministry of Youth and Affairs took place on the streets of Grozny, in the Sunzha and Shali districts of Chechnya. Several days staff members of the Ministry distributed free headscarves to women in streets, calling them to comply with the “modesty” dress code. According to the head of the social policy department of the Ministry Luisa Dzhabrailova more than 1000 headscarves were handed out within the framework of this project. The project was broadly covered by local media and a brief report was published by local news agency⁵⁷. Although this project cannot be regarded as illegal, it clearly re-

⁵⁵ BBC Олег Антоненко *Чечня: где кончается Конституция и начинается шариат?* / BBC Oleg Antonenko *Where the Constitution ends and Sharia-laws start?* / 26 December 2008 / http://news.bbc.co.uk/1/hi/russian/russia/newsid_7800000/7800125.stm [Visited 12 March 2014];

⁵⁶ Мемориал *О борьбе за морально-нравственную чистоту общества в Чеченской Республике* / Memorial *On a fight for a moral purity of Chechen society* / 21 February 2008 / <http://www.memo.ru/2008/02/22/2202081.htm> [Visited 12 March 2014];

⁵⁷ Grozny Inform В Грозном состоялась акция “Сестра, надень платок” / Grozny Inform *The project “Sister, put on a hijab” took place in Grozny* / 17 August 2012 / <http://www.grozny-inform.ru/main.mhtml?Part=11&PubID=35825> [Visited 18 March 2014];

flects that the local authorities have a “patronizing” attitude toward the Islamic dress code and some ideological efforts were made in order to spread a “propaganda” on this issue.

This information may support the assumption that some dress code policy actually exists, even if no legalization took place in a visible manner. It was also mentioned by a rapporteur of the Committee on Legal Affairs and Human Rights in his report, literally saying that this intolerable situation often exacerbated by the behavior or statements of the local authorities. The rapporteur underlined that during a fact finding mission to Chechnya they familiarized themselves with several reports of a degrading treatment suffered by women following the introduction of rules directly dictated by the regime run by the current president, including reports on headscarf issues ⁵⁸.

However, another point of view should be presented as well. Chechen authorities made several statements, clearly saying that no mandatory dress code was implemented and that all ‘virtue’ campaigns were run by unknown groups of young men without any support from state officials or law enforcement bodies. Some journalists also reported that they failed to find any creditable legal sources, enforcing the mandatory Islamic dress code and they doubted that any regulation on this issue was ever adopted. They argue that no mandatory dress code for state employees was ever adopted in a form of regulation, thus no compulsive measures can be undertaken in order to force them to comply with it. At the same time, they admit that some female state employees were verbally instructed to use more modest clothing. Some general recommendations were made regarding a length of a skirt or dress, color of clothing, etc.

Summing up, in this sub chapter I present all legal sources regarding the Islamic dress code policy I managed to find during my research. One of them – the regulation №168 of 11 July 2013 was officially published, currently in force and available online. As to the edict № 04/27, it seems that it has never been officially published. Or at least it cannot be found in a repository of legal acts issued in the Chechen Republic or at the official website of the Head of the Chechen Republic or the Chechen Government. However, a scanned

⁵⁸ Committee on Legal Affairs and Human Rights Dick Marty *Legal remedies for human rights violations in the North-Caucasus Region*, *ibid supra*;

copy of it looks quite trustworthy. As to the Chechen State University, as I already said, I accept a fact that the dress code policy was implemented by a decision of the academic council based on a statement made by university officials themselves. Based on the facts cited above I may divide all females those rights may be potentially violated by the Islamic dress code policy into three large groups. The first group is female employees, both in state and private sector. However, it seems that state employees (or state civil servants – this term is generally used in Russian legislation) are more significantly affected as I have no information about ‘virtue’ oppression performed in private sector. Bearing in mind the fact that the dress code policy presumably is supported by the republic authorities, at least ideologically, I may conclude that state servants are located at the frontline of a probable violation. The second group is pupils and students of state educational institutions as they already faced a legally prescribed uniform, which includes a headscarf.

These two categories have one common characteristic – both employees and student face dress codes in one way or another quite frequently as it is a normal practice for many countries and organizations to adopt some rules regarding attitudes of their student or employees (not including clothing which can be regarded as religious, of course). Breach of a dress code regulations may result in administrative punishment imposed on employee or student or even may lead to expulsion. The third category can be broadly defined as all females residing in the Chechen Republic since paintball attacks were directed against an undefined list of females. Generally speaking, anyone may become a victim of ‘modesty’ oppression, irrespective of age, marital status and even religious beliefs.

2.3 How the problem is addressed by Russian and Chechen authorities

Shortly after the paintball attacks were reported by media and human rights activists, a statement was issued by local police department, saying that they had received no claims from victims of these attacks, literally evaluating them as a random violence.

However, three complaints were later submitted to police. Victims claimed that they were attacked because of their improper clothing and uncovered hair. Some investigation procedures were performed, but no criminal charges were brought against suspects. On September 2010 the Ombudsman on human rights of the Russian Federation lodged a claim, asking Chechen prosecution authorities to re-investigate the attacks. The prosecutor

of the Chechen Republic dismissed a decision of the Ministry of Internal Affairs of the Chechen Republic, indicating that investigation procedures were clearly insufficient. Police was ordered to re-investigate the case and bring criminal or administrative charges against suspects. The order was signed by the deputy Prosecutor General of the Russian Federation. Besides, as the Prosecutor General's office reported, a thorough investigation will also be launched regarding a video of one of the attacks posted on YouTube ⁵⁹. However, results of the investigation were never widely reported.

It appears that a hijab-issue drawn some attention of the federal authorities as well. In 2013 some schools at the Stavropol region, a neighboring 'subject' located close to Chechnya, imposed ban on wearing headscarves at local schools. A lawsuit was filed by Muslim pupils' parents, but the ban was upheld by a court. The issue of the Islamic dress code and its appropriateness in state schools drawn public attention so much so that the President Putin addressed it during his annual television press conference in December 2012, literally saying that "there are no hijabs in our culture, and when I say 'our', I mean our traditional Islam". The headscarf tradition among Muslims, the President Putin underlined, is an alien tradition and there is no reason for Russian Muslims to adopt it ⁶⁰: "Even Islamic scholars in the Muslim world are saying it's the wrong thing to do [to wear hijabs in schools]," he said ⁶¹. "Shall we adopt alien traditions? Why would we do that?" ⁶² – President Putin asked his audience.

The same position was expressed by the President few months earlier in October 2012 during a meeting with supporters, when he stated that a secular nature of the country should

⁵⁹ Кавказский Узел Прокуратура Чечни обязала милицию расследовать нападения на женщин без платков / The Caucasian Hub *Chechen prosecution authorities obliged police to investigate attacks on women* / 14 October 2010 / <http://www.kavkaz-uzel.ru/articles/175525> [Visited 18 March 2014];

⁶⁰ New York Times *Local Russian Hijab Ban Puts Muslims in a Squeeze* / 18 March 2013 / <http://www.nytimes.com/2013/03/19/world/europe/russian-regions-hijab-ban-puts-squeeze-on-muslims.html?pagewanted=1> [Visited 19 March 2014];

⁶¹ On Islam *Putin Backs Hijab Ban in Russia Schools* / 20 December 2012 / <http://www.onislam.net/english/news/europe/460521-putin-backs-hijab-ban-in-russia-schools.html> [Visited 18 March 2014];

⁶² The Moscow News Kristen Blyth *No future for Mosque-ow*, *ibid supra*;

prevail over religious feelings. “We must always treat the religious feelings of people with a great respect. That must be shown in the state's activities, in the nuances, in everything” – Putin told, however, emphasized that “[...] we have a secular state and we should act on this premise” ⁶³. “We should see how our neighbors, European states deal with this issue [wearing hijabs]. And everything will become clear,” – Putin said. He also favored the idea of introducing neutral school uniforms in order to mitigate religious sensitive issues among pupils of different religious views ⁶⁴. The same thesis was repeated by the President one year later. The wearing of hijabs to school is not traditional even in ethnic regions of Russia, he said. “There is nothing good about it. True, there are peculiarities in ethnic republics, but what you speak about is not an ethnic peculiarity but a demonstration of the known attitude to religion,” – Putin said. “I believe that our country can and should restore school uniforms. That is already being done and I hope the regions will not forget this. I hope they will introduce these uniforms in the most active way” ⁶⁵.

⁶³ Hurriyer Daily News *Putin backs secular values after school bans hijabs* / 19 October 2012 / <http://www.hurriyetdailynews.com/putin-backs-secular-values-after-school-bans-hijabs.aspx?pageID=238&nID=32774&NewsCatID=353> [Visited 21 March 2014];

⁶⁴ Russia Today *Putin against hijab in schools* / 18 October 2012 / <http://rt.com/politics/hijab-religion-putin-school-718/> [Visited 22 March 2014];

⁶⁵ Interfax *Putin: nothing good about wearing hijabs to school* / 25 April 2013 / <http://www.interfax-religion.com/?act=news&div=10414> [Visited 22 March 2014];

3 Analysis of legitimacy of the mandatory Islamic dress code policy in Chechnya

3.1 Legal system of the Russian Federation

As my goal is to focus primarily at the legal perspective of the research problem, it is important for me to define relevant legal sources. In this part of the thesis I present a brief overview of the legal system of the Russian Federation. I use scholarly sources prepared by Marchenko, Nercessyans and Babayev who are highly competent scholars on the theory of state and law of the Russian Federation. However, I start this sub chapter with a brief presentation of the structure of the country, otherwise it may be complicated to understand its' legal system. As stipulated by the Constitution, the Russian Federation consists of republics, territories, regions, cities of federal importance, an autonomous region and autonomous areas which are all 'subjects' of the Russian Federation. A complete list of all 'subjects' may be seen in Article 65 of the Constitution. Term 'subject' is used in the Constitution as a general term to describe territorial units in which the country is divided. They are fully equal, though they may have distinctions regarding size, population, etc.

In my thesis I schematically divide law system of the Russian Federation into two levels, federal and regional, though three-level system is commonly used in academic sources – federal level, level of 'subjects' of the Federation and local or so-called municipal level. However, a three-level system doesn't serve the purpose of this thesis, making a differentiation irrelevantly detailed, while a two-level system suits it much better. Secondly, several important principles are applicable to the legal system of the Russian Federation. The Russian Federation is a country with a civil law system unlike countries with common law system. Thus, a sole and principal source of law in the Russian Federation is written law norms, which can be codified or not, but are lined up in a strict hierarchy which is based on their territorial application (are they applicable in the whole territory of the country or not) and the body issuing a norm⁶⁶. The hierarchy of law sources is briefly expounded below.

⁶⁶ William Burnham, Gennadii Mikhaïlovich Danilenko, Peter B. Maggs *Law and Legal System of the Russian Federation*, ibid supra;

The scope of power of one particular law norm or a sub legislative act depends on a place it has in a hierarchy of legal sources. By a general rule, norms of a lower hierarchical level will always be surpassed by norms of a higher level, composing clearly defined vertical system. However, several exceptions exist. As applied to a purpose of this thesis I am mostly interested in exceptions concerning the scope of application of regional norms (norms of ‘subjects’) as they under some circumstances may prevail over norms of a federal level ⁶⁷.

3.1.1 The Federal level

The Constitution of the Russian Federation is a domestic legal source of a highest hierarchical rank, supplemented by international treaties and conventions to which the Russian Federation is a party. It is an issue under discussion among scholars which source is of a highest power – the Constitution (domestic level) or international treaties (international level) to which Russia is a party. However, this strictly theoretical debate practically makes no difference, as all laws adopted for the territory of Russian Federation including local laws and sub legislative acts shall comply with international treaties to which the state is a party and with the Constitution ⁶⁸ which lists several non-derogable human rights and freedoms. Moreover, “man, his rights and freedoms are the supreme value” ⁶⁹ and “[...] shall be directly operative. They determine the essence, meaning and implementation of laws [...]” ⁷⁰. According to Article 55, “the listing in the Constitution of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as a rejection or derogation of other universally recognized human rights and freedoms” ⁷¹ – this norm obviously

⁶⁷ V. Nercessyans *Fundamental Theory of State and Law* / NORMA-INFRA-M, Moscow, 1999, p. 407-414.

⁶⁸ The Constitution of the Russian Federation of 12 December 1993 / Compilation of the Legislation of the Russian Federation, №15, Article 1691 of 14 April 2014 with annexes / Russian-language text may be found here: <http://www.constitution.ru> English translation may be found here: <http://www.constitution.ru/en/10003000-01.htm>

⁶⁹ The Constitution of the Russian Federation, article 2, *ibid supra*;

⁷⁰ The Constitution of the Russian Federation, article 18, *ibid supra*;

⁷¹ The Constitution of the Russian Federation, para 1 of article 55, *ibid supra*;

means that within the territory of the Russian Federation all internationally recognized human rights and freedoms are equally applicable, irrespective of whether they were reflected in the Constitution or not. All law norms passed at the territory of the Russian Federation shall comply with the Constitution. If a legal norm contradicts the Constitution, this norm is null and shall not be applicable ⁷².

As I already mentioned, the most important source of law in Russia, except international treaties, is the Constitution. Article 28 of the Constitution of the Russian Federation protects freedom of thought and conscience and freedom of religious practice, including the right to practice any religion of personal choice or not to practice any religion at all ⁷³. Article 55 stipulates that “in the Russian Federation no laws shall be adopted cancelling or derogating human rights and freedoms” ⁷⁴. Norms about the supremacy of the Constitution are also important. Article 4 proclaims that “the Constitution of the Russian Federation and federal laws shall have supremacy in the whole territory” of the country ⁷⁵, supplemented by article 15, which reads as follow: “The Constitution [...] shall have the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation. Laws and other legal acts [...] shall not contradict the Constitution” ⁷⁶. At the same time, article 5 protects the right of ‘subjects’ of the Federation to have its own constitutions and legislation ⁷⁷, while article 76 stipulates that “outside the limits of authority of the Russian Federation, of the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, the Republics [...] shall exercise their own legal regulation, including the adoption of laws and other normative acts” ⁷⁸.

⁷² Babayev V.K. *The Theory of State and Law*, ibid supra;

⁷³ The Constitution of the Russian Federation, article 27, ibid supra;

⁷⁴ The Constitution of the Russian Federation, article 55, ibid supra;

⁷⁵ The Constitution of the Russian Federation, article 4, ibid supra;

⁷⁶ The Constitution of the Russian Federation, article 15, ibid supra;

⁷⁷ The Constitution of the Russian Federation, article 5, ibid supra;

⁷⁸ The Constitution of the Russian Federation, article 76, ibid supra;

Federal laws are composing the second level of the federal hierarchy of norms. They are subdivided into federal constitutional laws whose main purpose is to elaborate norms established by the Constitution; and ordinary federal laws ⁷⁹. Ordinary federal laws are formally divided into codified (so-called codes, for instance, The Criminal Code of the Russian Federation) and non-codified federal laws and may not contradict the federal constitutional laws ⁸⁰, the Constitution itself and international norms.

The third level is composed of Presidential decrees, regulations of the Government and ministries' regulations and instructions. Decrees of the President of the Russian Federation are applicable within the whole territory of the country and shall not contradict the Constitution and federal laws ⁸¹. The same is equally applicable to Governmental regulations, whereas ministries' regulations and instructions shall be in conformity with all law sources mentioned above and may be rejected by the Government ⁸².

3.1.2 The Regional level

The regional hierarchy of laws is consisted of legal norms of 'subjects' of the Russian Federation. The scope of authority of 'subjects' of the Russian Federation regarding a law-making process was established by the Constitution. More precisely, Article 71 introduces the sole jurisdiction of the Russian Federation, Article 72 – the joint jurisdiction of the Russian Federation and its subjects. The sole jurisdiction of the Russian Federation, for instance, includes: regulations regarding foreign policies; military defense; judicial system; protection of the rights and freedoms and several other issues of a federal importance. The joint jurisdiction, among other, includes: protection of the rights and freedoms of man and citizen; general issues of [...] education; administrative, administrative procedure, labor, family, housing [...] legislation, etc ⁸³. However, "outside the limits of authority of the

⁷⁹ V. Nercessyans *Fundamental Theory of State and Law*, ibid supra, p. 407-414.

⁸⁰ Babayev V.K. *The Theory of State and Law*, ibid supra;

⁸¹ The Constitution of the Russian Federation, para 3 of article 90, ibid supra;

⁸² Marchenko Mikhail *The Theory of State and Law*, ibid supra;

⁸³ The Constitution of the Russian Federation, articles 71 and 72, ibid supra;

Russian Federation and the powers of the Russian Federation on issues under joint jurisdiction [...] the subjects of the Russian Federation shall possess full state power”⁸⁴. But laws of ‘subjects’ of the Russian Federation cannot contradict federal laws adopted within the limits of a sole authority of the Russian Federation and the powers of the Russian Federation on issues under joint jurisdiction. But outside the limits of authority of the Russian Federation and the joint jurisdiction, all ‘subjects’ are free to exercise their own legal regulation, including the adoption of laws. And if a contradiction between it and federal laws occur, law of a ‘subject’ shall prevail. By general rule, a law of a ‘subject’ can be applicable only within the territory of that ‘subject’. Republics which are also ‘subjects’ of the Russian Federation, but have a slightly different legal status, may also adopt their own local constitutions and law norms (regulations) of governments⁸⁵.

And lastly, the lowest level of regional hierarchy is composed of local municipal legal norms⁸⁶.

3.2 The Stavropol region case

In this part of the paper I analyze the legitimacy of the Islamic dress code policy. As it is clear from the previous chapter, the main obstacle which makes this a complicated goal is a lack of clear legal norms issued in order to adopt the Islamic dress code. When a policy is implemented through a non-written orders and instructions or process of shadow influence, it is always complicated to perform a legal analysis of it.

However, while doing my research, I found a domestic case which I can use as a foundation of my analysis. This case was mentioned before – a case of the Stavropol region. It originated from a verbal instruction of a school teacher of a small school of Kara-Tube village who prohibited several female Muslim pupils from wearing headscarves in school. Their parents lodged a complaint to a local Muslim council, which arranged a meeting with

⁸⁴ The Constitution of the Russian Federation, article 73, *ibid supra*;

⁸⁵ Marchenko Mikhail *The Theory of State and Law*, *ibid supra*;

⁸⁶ V. Nercessyans *Fundamental Theory of State and Law*, *ibid supra*, p. 407-414.

the Stavropol region authorities. Whatever the case, but no final agreement was reached between parties, although the fact that Kara-Tube school administration reportedly allowed pupils to attend school in ‘ordinary’ kerchiefs but not hijabs. Nevertheless, region authorities strongly upheld a ban which was based on the regulation of the Government of the Stavropol region №422-P of 31 October 2012 “On approval of general requirements regarding a school uniform and appearance of pupils of states educational institutions of general education and municipal educational institutions of municipal education of the Stavropol region”⁸⁷. The preamble of the regulation №422-P holds that with aim to provide a secular education in state educational institutions of the Stavropol region the Government adopted general requirements regarding school uniforms and appearance of pupils. In accordance with paragraph 9 of the regulation №422-P pupils are not allowed to wear religious symbols, religious clothing or clothing with religious prints on it at school. Pupils also are not allowed to wear headdresses of all kinds in classrooms and on other school premises. Curiously, both Stavropol and Chechen governments for regulations №422-P and №168 respectively used the same model text, but one regulation prohibits headscarves and the other prohibits not wearing them.

The regulation №422-P was challenged by pupils’ parents in courts. First, in the Stavropol Region Court and then – in the Supreme Court of the Russian Federation. Applicants argued that the regulation №422-P contradicts the Federal Law of 26 September 1997 №125 “On a freedom of conscience and religious associations” which holds that freedom of religion may be limited only by federal law, but not by a regulation of a ‘subject’ (see para 2 Article 3)⁸⁸. A unanimous conclusion was reached by both courts – the regulation

⁸⁷ The regulation of the Government of Stavropol region №422-P of 31 October 2012 “*On approval of general requirements regarding a school uniform and appearance of pupils of states educational institutions of general education and municipal educational institutions of municipal education of Stavropol region*” / “Stavropol Pravda” of 13 November 2012 № 292. The Russian-language text may be found, f.ex., here: <http://www.regionz.ru/index.php?ds=1901775>

⁸⁸ Federal Law of 26 September 1997 №125-FZ “*On a freedom of conscience and religious associations*” / “Rossiyskaya Gazeta” of 1 October 1997 №190 with annexes. The Russian-language text may be found here: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=149069;div=LAW;dst=100004;rnd=0.13780809379027426> The English-language text may be found here: <http://www2.stetson.edu/~psteeves/relnews/freedomofconscienceeng.html>

№422-P does not contradict the domestic legislation in general; and in particular cannot be regarded as a violation of a right to a freedom of religion.

A decision of the Supreme Court of the Russian Federation, a domestic court of a highest hierarchy, is particularly interesting for me as the Supreme Court gave an accurate evaluation of a practice of wearing headscarves in state educational institutions based both on the domestic legislation and a case-law of the ECHR. The Court in its judgment of 10 July 2013 №19-APG 13-2 ⁸⁹ ruled that, according to Article 72 of the Constitution of the Russian Federation, education is an issue of a joint jurisdiction of the Russian Federation and its ‘subjects’. A legislation on education is included in the Constitution, the Federal Law “On Education” ⁹⁰, other laws of the Russian Federation which may handle with educational issues and laws of ‘subjects’ which shall be adopted in accordance with the Federal Law “On Education”. The Federal Law “On Education” in Article 29 also introduces a provision which allows ‘subjects’ to adopt their own regulations regarding a protection of health and well-being of pupils and students ⁹¹. Besides, according to the new Federal Law of 29 December 2013 № 273 “On Education in Russian Federation” (entered into force on 1 September 2013 and substituted the Federal Law “On Education” ⁹²), educational institutions by a general rule have a right to adopt their own uniforms regulations if no other rules on this issue were adopted by the Federal Law “On Education in Russian Federation” or by legislation of ‘subjects’ (para 18 Article 28) ⁹³.

⁸⁹ The judgment of the Supreme Court of the Russian Federation of 10 July 2013 №19-APG 13-2. Russian-language text may be found here: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=349305>

⁹⁰ The Federal Law “On Education” of 10 July 1992 №3266-1 / “Rossiyskaya Gazeta” №13 of 23 January 1996 with annexes. The Russian-language text is available here: <http://www.consultant.ru/popular/edu/>

⁹¹ The Federal Law “On Education” of 10 July 1992 №3266-1, Article 29, *ibid supra*;

⁹² The Federal Law “On Education in Russian Federation” has not entered into force by time when judgment №19-APG 13-2 was pronounced. Thus, the Court argumentation was based on the Federal Law “On Education” which was applicable at that time and at the time when regulations №422-P and №168 came into force;

⁹³ The Federal Law of 29 December 2013 № 273 “On Education in Russian Federation” / “Rossiyskaya Gazeta” №303 of 31 December 2012 with annexes. The Russian-language text is available here: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=158523;div=LAW;dst=100006;rnd=0.6355339535164656>

The Supreme Court underlined that an expert opinion was prepared by the Federal service on customers' rights protection and human well-being surveillance. Authors of this opinion concluded that a day long indoors wearing of headdresses in classrooms may cause health damage and physical discomfort, while school uniform is aimed to protect health of pupils and students⁹⁴ thus, shall be composed of clothing which is safe for health and physical comfort of pupils and students. Besides, as educational institution is obliged to comply with secular nature of the education, uniform shall be neutral. The Court concluded that the Government of the Stavropol region had a right to adopt requirements regarding school uniforms as these requirements were adequately neutral, non-discriminative and aimed to guarantee secular nature of state education and protect pupils' health and well-being.

As to a freedom of religion, the Supreme Court ruled that it is guaranteed by the Constitution of the Russian Federation. Article 28 stated that “everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with other any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them”. Legislation on religious matter includes the abovementioned Law “On a freedom of conscience and religious associations” which, among other things, states that Russia is the secular state and a secular nature of education is guaranteed in all state and municipal educational institutions. Carefully examining provisions of the regulation №422-P, the Supreme Court concluded that uniform requirements implemented by the regulation №422-P are equally applicable to all pupils irrespective of their religious beliefs with the aim to guarantee secular education and religious neutrality. As to the applicants' argument that a headscarf-ban forces them to depart from rules of behavior which are important for their faith, the Court held that in a democratic society a secular state has a right to adopt unified non-discriminative rules of conduct in state and municipal institutions and organizations. The Court underlined that its decision is in conformity with well-established practice of the ECHR, expressed in judg-

⁹⁴ The Letter of 9 November 2012 № 01/12662-12-23 of the Federal service on customers' rights protection and human well-being surveillance / The Russian-language text is available here: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=144366;fld=134;dst=4294967295;rnd=0.7668248475450621>

ments *Sahin v. Turkey*, *Kurtulmus v. Turkey*, *Kervanci v. France* and *Dogru v. France* ⁹⁵. As to the claim that the applicant's right to manifest their religious beliefs was violated, the Supreme Court emphasized that they were not limited in their right to practice religious rites and ceremonies in various religious places and places for worship, such as mosques. Besides, the applicants were allowed to choose a home education, external studies program or education in religious educational institution for their children. Thus, neither their freedom of religion was not violated nor was a right to education. At the same time, the Court supported the applicants' argument that limitation of a freedom of religion and belief is a sole jurisdiction of the Russian Federation and cannot be introduced by a 'subject' of the Federation. However, inasmuch as the Court concluded that the regulation №422-P cannot be regarded as a legal act issued with an aim to limit freedom of religion and belief, this conclusion does not make any difference.

So, why is the Stavropol case so significant for the purpose of my thesis? First of all, it seems to be a sole court opinion addressing the headscarf problematique in state educational institutions. Several important issues were raised both by the Supreme Court and by the applicants. The applicants' argumentation was based on the sole thesis: a freedom of religion and belief as a right guaranteed by the Constitution of the Russian Federation may be limited only at the federal level, that is to say – by federal laws. Although the Supreme Court fully agreed with the applicants on this issue, it held that a right to wear a religious dress in state educational institution cannot be protected under a freedom of religion provision ⁹⁶. Thus, two important conclusions were made by the Court: A) 'subjects' of the Russian Federation and educational institutions themselves have a right to adopt their own reg-

⁹⁶ Hijab-*problematique* was also examined by the Supreme Court of the Russian Federation in a case concerning a right to be photographed for ID in a headscarf. In that case the Court concluded that a right to wear a hijab is protected under freedom of religion thus, may be limited only by federal law. Whereas, a ban was introduced not by a federal law, but by an instruction of the Ministry of Internal Affairs. The instruction was dismissed by the Court. Thus, from one side, the Court substituted its opinion expressed in the *Stavropol-case* that any limitation to a freedom of religion shall be imposed by a federal law. From another side, the Court held that a right to wear a religious clothing is protected under freedom of religion provision. See: Decision of the Supreme Court of the Russian Federation of 5 March 2003 №KAS03-166. The Russian-language text may be found here: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=42500>

ulations regarding a dress code in educational institutions as long as these regulations are in conformity with the federal legislation; B) mandatory uniform policy in state or municipal educational institutions cannot be regarded as a violation of freedom of religion right as long as it is established in compliance with a federal legislation and applicable to all pupils and students irrespective of their religious beliefs with the aim to guarantee a secular nature of education, religious neutrality and show respect toward pluralistic and atheistic views and beliefs.

Inasmuch as both regulations, №422-P of Stavropol region and №168 of Chechen Republic, have identical object of regulation – a dress code in state educational institution – the Supreme Court decision is equally applicable to both. So, a conclusion can be made regarding the legality of school dress code policy in Chechnya, adopted by the regulation №168. Although the Chechen authorities undoubtedly had a right to implement a certain dress code for state and municipal educational institutions, the regulation №168 cannot be regarded as legitimate or legally valid, firstly, because it presumably contradicts a secular nature of education and, secondly, because it is not satisfy health recommendations made by the Federal service on customers' rights protection and human well-being surveillance regarding school uniform. Provision regarding secularism and secular nature of state (municipal) education can be found in the Law of The Chechen Republic “On education in The Chechen Republic”. The very first article of it proclaims a secular nature of education as one of the principles education in the republic shall be based on. At the same time, I argue that there is no clear reference in the regulation №168 that a headscarf requirement springs from religious ideas and beliefs, though it is absolutely logical to assume that as a population of Chechnya is predominantly Muslim and it appears that local government repeatedly expressed their positive attitude towards Islamic ethical code of conduct. However, strictly hypothetical, if local authorities manage to substantiate a necessity of a headscarf or kerchief (not hijab, of course, which is an article of clothing with obvious religious meaning) appealing not to religious norms but health issues and demonstrate a religious neutrality of it, there will be no violation. As to other requirements regarding a length of a dress and skirt, transparent clothing, etc., I consider them as in compliance with the domestic legislation. Firstly, school uniforms consisting of a dress or a skirt, a jacket or a vest and a non-

transparent blouse is a common practice for many educational institutions both in Russia and other countries. Secondly, there is no clear evidence that this requirement is sourced from religious rules of behaviour, as these articles of clothing have no clear connection with some particular religion. Thirdly, the provision regarding secular nature of education was added to the regulation №168, deliberately or not, but it still reflects the fact that Chechen authorities recognized their duty to provide religious neutrality in state and municipal educational institutions.

Incidentally, Chechnya is not sole Russian ‘subject’ with predominant Muslim population, so the Islamic dress code issue is sensitive in some other regions as well. Criticizing the situation in Chechnya, the President of Caucasian Republic of Ingushetia stated that he opposes a practice of wearing hijabs in state schools. Permission of hijab can raise a problem of religious extremism, – he argued, expressing concern that if today authorities allow headscarves, tomorrow others may want to wear a burqa or nikab. An attempt to ban hijabs for schoolgirls was also undertaken in Chechnya neighboring ‘subject’ the Republic of Dagestan⁹⁷.

As to the dress code for university student, the Law “On Education in Russian Federation” is equally applicable to all state or municipal colleges, institutions, universities and vocational schools thus, conclusions made above can be broaden to this field as well. However, hijabs are allowed in some state universities in Russia. For instance, in 2012 several female students of the State University of the Republic of Bashkortostan were informed that all students wearing hijabs will be denied access the university facilities. Students were also instructed not to wear hijabs in campus. It remains unclear whether some written regulation was issued or just verbal instructions were given. A meeting was arranged between the university authorities, a local Muslim council and the Interfaith Council of the republic. As a result students were assumed that they may continue to wear headscarves in university as it is their right guaranteed by the Constitution of the Russian Federation, the internation-

⁹⁷ The Islamic Post *Battles Around hijab in Russia. Prohibitions and Murders* / 12 May 2013 / http://www.islamicpostonline.com/article/battles_around_hijab_russia_prohibitions_and_murders-445 [Visited 6 April 2014];

al human rights norms and the Law “On a freedom of conscience and religious associations”. Another approach to a hijab-issue was adopted by the Volgograd State University, where a hijab-ban was requested by non-Muslim students after an attack of suicide bomber in 2013. A voting was held by university authorities among professors and students’ representatives and a new dress code policy was adopted in accordance with the voting results. According to a new policy, hijabs were banned in all university premises together with mini-skirts, flip-flops and shorts. The same ban was adopted in other Volgograd universities⁹⁸. Thus, it appears that a regulation of a hijab-issue essentially varies from ‘subject’ to ‘subject’ with a tendency to ban visible religious clothing in regions where it appears to be a sensitive issue (for instance, in regions with large Muslim communities or regions faces a risk of religious extremism).

3.3 Dress code for state civil servants

As I may sum up previous sub chapter, education is a joint jurisdiction of the Russian Federation and ‘subjects’, and regulations regarding dress code can be adopted both on the level of ‘subjects’ and by state or municipal educational institutions themselves. These regulations shall, nevertheless, be in conformity with a federal legislation. At the same time, there is no specific law in Russia which explicitly regulates dress code issues for state civil servants or – at very least – redirect this issue to a regional level. However, several basic principles, although very general ones, can be pointed out.

First of all, state service is built upon principles of a rule of law and priority of human rights and freedoms, their direct applicability, respect and protection⁹⁹ as stipulated by the Federal Law of 27 May 2003 №58-FZ “On a system of state service in Russian Federation”. As member of the State Duma – the lower house of the Federal Assembly, the main

⁹⁸ Fedpress Дресс-код для студентов: в ВолГУ запретили носить хиджабы / Fedpress *Dress code for students: hijabs were banned at Volgograd State University* / 20 November 2013 / <http://fedpress.ru/news/society/reviews/1384937931-dress-kod-dlya-studentov-v-volgu-zapretili-nosit-khidzhaby> [Visited 7 April 2014];

⁹⁹ Article 3 of the Federal Law of 27 May 2003 №58-FZ “*On a system of state service in Russian Federation*” / “Rossiyskaya Gazeta”, №104 of 31 May 2003 with annexes / Russian-language text may be found here: http://www.consultant.ru/popular/gossluzh/64_1.html

legislative body of the Russian Federation – and scholar within the field of a state civil service Alexey Grishkovets argued ¹⁰⁰, there are two main legal act regarding a state civil service in Russia – the Federal Law “On State Civil Service in the Russian Federation” ¹⁰¹ which in Article 18 literally proclaims that a state civil servant “shall show respect to moral customs and traditions of all nations live in Russia and take into account cultural and other specialties of nations, ethnoses [...] groups and religious confessions”; and the Decree of the President of the Russian Federation of 12 August 2002 № 885 “On approval of the general principles of official conduct of public officials” ¹⁰² with similar provision.

The Federal Law “On State Civil Service in Russian Federation” is the main federal law aimed to regulate relationship between state and state civil servants. In Article 4 basic principles of a state civil service were adopted, including priority of human rights and fundamental freedoms; unification of legal sources of a state civil service and civil service in ‘subjects’ of the Russian Federation; equal opportunities for all irrespective of sex, nationality, religious attitudes. As Article 5 holds, legislation on state civil service includes the Constitution, Federal Laws “On a system of state service in Russian Federation” and “On State Civil Service in Russian Federation”, other federal laws which are applicable to this object of regulation, decrees of the President of the Russian Federation, regulations of the Government of the Russian Federation, legal acts of state bodies and institutions, constitutions, laws and other legal acts of ‘subjects’. International treaties to which Russia is a party shall in any case prevail over domestic legislation – this provision was specially underlined in para 2 of Article 5. The list of relevant laws is quite numerous indeed. However, the issue of a dress code appears to be omitted. The main professional duties and responsi-

¹⁰⁰ Кавказский Узел Распоряжение о дресс-коде для чиновников в Чечне выходит за рамки законодательства РФ, считают эксперты / The Caucasian Hub *The dress code regulation is outside the scope of the legislation of the Russian Federation*, experts say, *ibid supra*;

¹⁰¹ The Federal Law of 27 July 2004 №79-FZ “On State Civil Service in the Russian Federation” / Rossiyskaya Gazeta №162 of 31 July 2004 with annexes / The Russian-language text may be found here: <http://base.garant.ru/12136354/>

¹⁰² The Decree of the President of the Russian Federation of 12 August 2002 № 885 “On approval of the general principles of official conduct of public officials” / Rossiyskaya Gazeta №152 of 15 August 2002 / The Russian-language text may be found here: <http://base.garant.ru/184842/>

bilities of state civil servants were listed in Article 15 and include, among others, an obligation to observe all laws mentioned above, follow instructions and regulations of supervisors and head of a body or institution – however, only if these instructions and regulations comply with the legislation of the Russian Federation and were issued within their scope of authority. State civil servants also obliged to follow rules of professional conduct. Some of these rules are enumerated few articles below in the Law. For instance, Article 18 holds that state civil servants shall “show respect to moral customs and traditions of all nations live in Russia and take into account cultural and other specialties of nations, ethnos [...] groups and religious confessions, promote religious and interfaith tolerance and harmony”. At the same time, heads of state bodies “shall not force state civil servants to participate [...] in religious organizations”. A brief conclusion can be made. Although ‘subjects’ and each particular state body have right to adopt their own regulations, these regulations still have to comply with the Constitution, federal laws and international norms.

As it was mentioned above, a state civil servant is obliged to “show respect to moral customs and traditions of all nations live in Russia and take into account cultural and other specialties of nations, ethnos [...] groups and religious confessions”. The same provision verbatim, but in a form of recommendation was adopted by the Decree “On approval of the general principles of official conduct of public officials” and in “The Model code of ethics and professional conduct of state civil servants of the Russian Federation and municipal servants”, adopted on 23 December 2010, protocol №21. From one side, this provision appears to be too broad and insufficiently defined, and allows various interpretations. Obligation to show respect to local customs and traditions may be broaden on the Islamic dress code if one manage to substantiate that there always was a tradition to wear headscarves among females in some particular region, and departure from this tradition may be regarded as a lack of respect to local customs and traditions. At the same time, I argue that obligation to “show respect to customs and traditions” is more or less passive as it does not require any active participation in a form of observance of these customs and traditions. From another side, this provision shall be regarded in conjunction with other provisions of the legislation on state civil service. And inasmuch as an important reference to international norms was made, I may conclude that it is impossible to substitute the mandatory Islamic

dress code policy under this provision. Firstly, it contradicts domestic legislation. Secondly, while interpreting legal norms, it is important to examine the essence of law. If this provision is strictly restrictive, it hardly can be justified in a democratic society. However, if it adopts ‘soft’ obligation not to show disrespect and negative attitude toward local norms and traditions, it will be in conformity with both domestic and international legislation.

As Grishkovets concluded ¹⁰³, a regulation [the edict №04/27 – author’s commentary] of Chechen authorities, apparently, is outside the scope of authority of a ‘subject’. Besides, it was adopted even not as a law of the ‘subject’, but in a form of edict which is a legal act of a lower hierarchy and shall comply with norms of higher hierarchy. If some administrative act on dress code issues exists, it may be challenged in a court for non-compliance with the federal legislation ¹⁰⁴. For instance, in 2007 in the Samara Region the edict, issued by local government and imposed a dress code for employees of local government (no mandatory hijabs indeed, but jeans, flip-flops, mini-skirts and tight tops were banned both for employees and for visitors, including journalist working in governmental buildings), was successfully challenged in court by the Samara Region Prosecutor’s Office and further dismissed ¹⁰⁵. In the interview Grishkovets mentioned that no laws regarding dress code and appearance of state civil servants were adopted in Russia. That is to a certain degree true as no mainframe federal law was adopted on this issue. At the same time, “The Model code of ethics and professional conduct of state civil servants of the Russian Federation and municipal servants” ¹⁰⁶ was adopted by the Presidium of the Presidential

¹⁰³ Кавказский Узел *Распоряжение о дресс-коде для чиновников в Чечне выходит за рамки законодательства РФ, считают эксперты* / The Caucasian Hub *The dress code regulation is outside the scope of the legislation of the Russian Federation, experts say*, *ibid supra*;

¹⁰⁴ Кавказский Узел *Распоряжение о дресс-коде для чиновников в Чечне выходит за рамки законодательства РФ, считают эксперты* / The Caucasian Hub *The dress code regulation is outside the scope of the legislation of the Russian Federation, experts say*, *ibid supra*;

¹⁰⁵ Российская газета Юлия Кривошапко *Наряд на службу* / Julia Krovoshapko *A dress for service* / 21 November 2007 / <http://www.rg.ru/2007/11/21/reg-jugrossii/dress-kod.html> [Visited 6 April 2014];

¹⁰⁶ “The Model code of ethics and professional conduct of state civil servants of the Russian Federation and municipal servants”, adopted on 23 December 2010, protocol №21. The Russian-language text may be found here: http://etkovd.ucoz.ru/news/otmenen_kodeks_professionalnoj_ehniki_sotrudnika_ovd_rf/2013-11-20-340

Council for Countering Corruption in 2010¹. State civil servants were advised to dress “in accordance with commonly used business style which is characterized by officiality, moderation, conventionality and tidiness”. State bodies and institutions were ordered to adopt their own codes of ethics and professional conduct based on the Model Code. However, any provision regarding dress code and appearance still can be adopted only in a form of recommendation, except the case when a uniform was previously adopted on the federal level for this category of state civil servants specifically. Any penalty may be imposed to a state civil servant only if it is provided by federal legislation. No additional penalty may be adopted by such codes or by each organization itself.

As to the legislation of the Chechen Republic, two basic legal acts were issued on this issue – The Law of the Chechen Republic of 6 October 2006 №29-rz “On State Civil Service in the Chechen Republic”¹⁰⁷ and The Order of the President of the Chechen Republic of 12 August 2009 №261 which adopted “The Ethical code of conduct of state servants of the Chechen Republic”¹⁰⁸. Due to space limit I don’t want to pay much attention to these documents as they precisely duplicated those legal acts which were adopted on the federal level and thoroughly examined in the beginning of this sub chapter. I may note that, although Chechen authorities copied an obligation to “show respect to moral customs and traditions of all nations live in Russia and take into account cultural and other specialties of nations, ethnos [...] groups and religious confessions” from above mentioned federal laws, no additional provisions regarding the Islamic dress code were adopted (except the above mentioned edict № 04/27). Hence, I may conclude with a great deal of confidence that if the mandatory Islamic dress code policy was ever enforced for state servants, it was made either through verbal instructions and shadow oppression, or through administrative acts of

¹⁰⁷ The Law of the Chechen Republic of 6 October 2006 №29-rz “*On State Civil Service in the Chechen Republic*” / “*Vesti Respubliki*” №83 of 6 October 2006 with annexes. The Russian-language text is available here: <http://docs.cntd.ru/document/906801666>

¹⁰⁸ The Order of the President of the Chechen Republic of 12 August 2009 №261 which adopted “The Ethical code of conduct of state servants of the Chechen Republic” / “*Vesti Respubliki*” № 166 (1098) of 25 August 2009. The Russian-language text is available here: http://www.mkchr.com/LoadedFiles/anticorrupt/Ethic_codex.pdf

minor importance which usually do not attract much attention and hence may be “hidden up” from NGOs and federal government.

One may argue that dress code policies are adopted worldwide in many business enterprises, such as, for instance, banks, law firms, plants, etc. That is certainly true. According to Russian legislation, employer has a right, not absolute though, to adopt rules regarding dress code. This issue appears to be outside the scope of the research question, but I found it important to briefly address it. First of all, being a country with civil law system, in Russia written legal norms are located at the top of the hierarchical pyramid. Contract made between employer and employee cannot contradict laws issued by the state, otherwise a contract would be declared void. However, in countries with common law system such as United Kingdom and USA many issues, including dress code issues, may be regulated by contractual agreements between employer and employee, stated in labor contract. Secondly, in accordance with basic principles and guarantees underpinned in Article 55 of the Constitution of the Russian Federation any legal acts which introduce or repeal any rights or obligations of citizens, including obligation to comply with a mandatory uniform policy, shall be adopted only in a form of federal laws. Any sub legislative acts on this issue may be adopted only if they are based on norms of federal laws previously adopted on the same issue ¹⁰⁹. In short, any mandatory dress code for employees shall be firstly authorized by the state and then it may be further adopted by employer. (I may give an example of fully legal mandatory dress code policy adopted in Russia – a dress code for public prosecutors, which was adopted by the Federal Law of 17 January 1992 №2202-1 “On the Prosecution Service in Russian Federation” ¹¹⁰.) If no such federal law exists, any further adoption of provisions regarding a mandatory dress code is permissible only if it arises from employees’ professional qualities, duties and responsibilities. As the Supreme Court of the Russian

¹⁰⁹ В. Архипов *Правила о рабочей одежде и законодательство России о труде, или дресс-код по-русски* / Современное право, №8, 2007 / V. Arkhipov *Dress code rules and labor legislation of the Russian Federation, or Russian dress code* / Современное право, №8, 2007, p. 80-86;

¹¹⁰ The Federal Law of 17 January 1992 №2202-1 “On the Prosecution Service in Russian Federation” / “Rossiyskaya Gazeta” №39 of 18 February 1992; №229, 25 November 1995 with annexes. Russian-language text may be found here: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=161270>

Federation has clarified, these qualities include ability of a person to perform his professional responsibilities in conjunction with his professional and qualifying skills and experience (education, specialization) and/or personal qualities (such as state of health, job experience, etc.). Thus, a dress code may be imposed only if wearing (or non-wearing) of some particular articles of clothing is necessary to successfully perform professional duties. For example, a 'white smock' dress code in hospitals arises from sanitary regulations, aimed to protect patients' health. A dress code at factories or mills may be imposed in order to avoid accidents and casualties. Meanwhile, in office environment a strict dress code can hardly be justified. Whereas no dress code was authorized by above mention federal laws on state civil service, it cannot further be adopted in sub legislative acts.

One may argue that a dress code in a form of ban of certain articles of clothing with religious meaning or religious symbols may be imposed in order to protect a secular nature of state service. But, this ban, nevertheless, shall also be adopted in a form of federal law. An issue of religious symbols in workplace was examined by the ECHR in so-called 'British' case, which actually put together four separate cases, including those of Nadia Eweida, who works for British Airways, and a hospital nurse Shirley Chaplin. Ms. Eweida was suspended for refusing to take off the cross which her employers claimed breached the private company's uniform code. The uniform code was further dismissed, however, no compensation was granted to Eweida for the time she was on non-payable leave because of her refusal to remove the cross. Shirley Chaplin also defended her right to wear a cross at work. In the case of Chaplin, the Court ruled that the concerns of hospital authorities for health and safety outweighed her desire to wear a cross visibly in the workplace, and the uniform policy, adopted by hospital was proportional and necessary in a democratic society¹¹¹. The ECHR addressed an issue of a ban on the wearing of religious clothing and symbols by civil servants and state employees. It appears that the same approach was adopted as in *Sahin v. Turkey* case, where the Court ruled that any dress code policy regarding religious clothing or symbols shall be based on domestic legislation, proportional and necessary in

¹¹¹ *Eweida and others v. Britain* case, *ibid supra*;

democratic society in order to pursue a legitimate aim. It appears that the issue of wearing religious clothing or symbols by state civil servants was never addressed by Russian legislative authorities to date. Hence, the general rules examined above shall apply.

And lastly, when this thesis paper was almost finished and I proceeded with revision, a new unified code of ethics and professional conduct for all state civil servants of the Russian Federation was announced. The work has not completely finished yet, however, a draft version of the code already exists and it will be finalized during summer 2014. State civil servants in accordance with the code are prescribed to wear modest and classical clothing. A lounge suit is recommended, but employees may dress casual if they prefer so, choosing neutral jeans or trousers, shirts, pullovers, polo-jersey, etc. It remains unclear whether issues on religious or traditional dress will be regulated by the code or not as a draft version has not been published to date ¹¹².

3.4 Secularism and the Russian legislation

The relationship between state and religious organizations in the Russian Federation is regulated by the Federal Law “On a freedom of conscience and religious associations”. On this Federal Law the Supreme Court based its judgment №19-APG 13-2 in the part addressing a claim of a violation of the right to freedom of religion of the applicants. Article 4 states that “the Russian Federation is a secular state. No religion may be established as a state or obligatory religion” and “in accordance with the constitutional principle of separation of religious associations from the state, the state: [...] does not interfere in the citizen's decision regarding religion and religious affiliation [...]; guarantees the secular character of education in state and municipal educational institutions”. In accordance with article 3 “freedom of conscience and freedom of religious profession, including the right to profess individually or corporately [...] any religion or not to profess any [...] are guaranteed with-

¹¹² Известия *Чиновников обяжут следовать Кодексу этики и соблюдать дресс-код* / *Izvestia State civil servants will be obliged to follow a code of professional conduct and dress code rules* / 28 April 2014 / <http://izvestia.ru/news/569813 - ixzz30UNPDZB7> [Visited 30 April 2014];

in the Russian Federation”. The same provision holds that “human and civil rights to freedom of conscience and freedom of religious profession may be restricted by federal law only to the extent necessary to protect the bases of the constitutional order, morality, health, rights, and legal interests of individuals and citizens and to secure the defense of the country and state security”. Another important provision was implemented by article 3, which reads as follow: “Prohibition of the enjoyment of the rights to freedom of conscience and freedom of religious profession, including actions accompanied by violence against the individual, intentional offense to the sentiment of citizens with regard to their religious affiliation, propaganda of religious superiority, destruction or alienation of property or threat thereof, is prohibited and is prosecuted [...]”¹¹³. To what extent a freedom of religion may be limited or, on the contrary, some particular religion or ideology, for instance, atheism be obtruded in society, is still a controversial issue. The Constitutional Court of the Russian Federation – the highest court of constitutional control in the country – expressed its opinion sufficiently clear. In decision of 5 December 2012 №30-P the Court underlined that right to a freedom of thought and religion also is recognized by international treaties to which Russia is a party. The Court referred to the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights (articles 9 and 18 respectively), literally saying that everyone has a right to adopt a religion or belief of his choice and practice it alone or in group publicly or privately. At the same time, it stated, that this right cannot be strictly limited to a private sphere solely as sometimes it is impossible to fully exclude it from public sphere. Thus, this right may be embodied publicly, for instance, during collective ceremonies and worships, or in a form of religious clothing and accessories a person may wear. Being a right of a high importance, freedom of religion and belief shall be regulated by a state, and the Russian Federation shall guarantee its neutrality and impartiality in religious sphere with the aim to achieve and protect peace and harmony, public order and religious tolerance in society without extensively interfering but taking into account the secular nature of the state. Thus, the free-

¹¹³ Federal Law of 26 September 1997 №125-FZ “*On a freedom of conscience and religious associations*”, ibid supra;

dom of religion shall correlate with other rights guaranteed by the Constitution, while state and its institutions are obliged to provide a fair balance between rights and freedoms of believers from one side and secular political and state institutions from another one without creating obstacles and interfering with a core of this right ¹¹⁴. The Constitutional Court made it clear that freedom of religion may be subject only to such limitations that are fair, necessary, proportional and non-excessive in order to protect public interests in accordance with para 3 Article 55 of the Constitution ¹¹⁵. This provision appears to be in compliance with international norms ¹¹⁶ and basic principles formulated in the case-law of the ECHR, thus I may build up my argumentation on it.

First of all, the Constitution of the Chechen Republic proclaims it as a secular state, literally saying that “no religion is allowed to determine matters of government or its obligations”, while “individual, his/ her rights and liberties are to be the supreme values” (article 3). It is supplemented by article 14, which holds that the republic “acknowledges and guarantees the rights and liberties of individuals and citizens in accordance with the Constitution of the Russian Federation, the Constitution of the Chechen Republic and in harmony with generally accepted principles and norms of international law”. Any form of gender or religious discrimination is forbidden (article 16). Article 25 specially underlined that “everyone has the right to a freedom of conscience and freedom of religion, including the right to profess [...] any religion or to profess no religion [...]”. What conclusion can be made based on those provisions listed above? By general rule, no one can be forced to dress in some particular way as a state is obliged to protect right to a private life and private autonomy, which includes each person’s right to wear clothing of his or her choosing. However, there is no doubts that practically this right cannot be unlimited (what, nevertheless, has

¹¹⁴ The decision of the Constitutional Court of the Russian Federation of 5 December 2012 N 30-P. The Russian-language text may be found here: http://www.consultant.ru/document/cons_doc_LAW_138978/

¹¹⁵ See: decisions of the Constitutional Court of the Russian Federation of 30 October 2003 №15-P; 22 March 2005 №4-P; 14 July 2005 №9-P; 16 June 2009 №9-P;

¹¹⁶ See: para 3 Article 18 of *The International Covenant on Civil and Political Rights*, ibid supra; para 2 Article 9 of *The Convention for the Protection of Human Rights and Fundamental Freedoms*, ibid supra;

nothing to do with a mandatory Islamic dress code). Several restrictions in this field may be adopted and appears to be more or less substantial. For instance, the widely adopted ban on appearance in public places in the nude; unlawful wear of uniform with military insignia or symbols of state law enforcement bodies; and public display of clothing with Nazi insignia or insignia of any extremist organization. However, I argue that an obligation to wear a headscarf imposed on all female residents of the republic hardly can be justified in a democratic society. Being discriminatory, this practice cannot be substantiated and justified. Besides, a headscarf as examined within the meaning of the research question is a headdress with an obvious religious meaning as it shall be discussed in conjunction with circumstances of its usage and meaning it has in some particular region. Based on numerous statements made by Ramzan Kadyrov I may conclude that in Chechnya headscarf is a purely religious issue. Thus, female residents also are protected under their constitutional right not to profess any religion at all. As to modest and non-revealing clothing-aspect, any restrictions in this field may be justified to that extend they are regulated by the Code of Administrative Offences of the Russian Federation in provisions regarding appearance in public places in the nude. Besides, para 5 article 6 of the Constitution of the Chechen Republic proclaims that “regulatory legal acts that touch upon the rights, liberties and obligations of individuals and citizens cannot be applied if they have not been officially published for general knowledge”¹¹⁷. It appears that no legal acts were ever adopted by Chechen authorities on the issue of the mandatory Islamic dress code in public places. Or at least it has never been officially published, and hence, in fact cannot be regarded as lawful.

Due to space limit I cannot discuss this issue more detailed. I found it more important to focus my efforts on a dress code for state civil servants, pupils and students of state educational institutions as there are legal acts which were adopted in respect to these categories and may be examined.

¹¹⁷ The Constitution of the Chechen Republic of 23 March 2003 / The Russian-language text may be found here: <http://chechnya.gov.ru/page.php?r=63> The English-language text may be found here: http://www.servat.unibe.ch/icl/cc00000_.html

4 Conclusion

So, what conclusion can be made based on the information presented above? To be more precise I repeat my research question which reads as follows: *“What is the legal status of the Islamic dress code policy in Chechnya within the framework of a domestic legislation? Is the policy in accordance with federal legislation of the Russian Federation, or may it be regarded as exceeding the authority of the Chechen Republic, or is a case of a legislative gap?”*

Literally speaking, the research question consists of two separate questions: legal status of the Islamic dress code; and its legitimacy under the domestic legislation of the Russian Federation. As to the first question, I may conclude that the Islamic dress code policy to a greater extent is quasi-legal, however, with several exceptions. It appears that only two legal acts of minor importance were adopted by Chechen authorities with aim to impose the mandatory dress code obligations on female residents of the republic. First one is the regulation №168 of 11 July 2013 “On approval of general requirements regarding a school uniform and appearance of students of state and municipal educational institutions of Chechen Republic”; and second one is the edict № 04/27 on dress code for state civil servants issued on 25 January 2011 by the Administration of the Head and the Government of the Chechen Republic. The regulation №168 was published and may be found online in repository of legal acts of the Chechen Republic. Whereas, the edict № 04/27 never has been published (presumably, it is a document for internal usage) and only a scanned copy of it is available. Some journalists were engaged in investigation of the mandatory dress code practices in the republic, besides the issue was examined by several respectable human right NGOs such as Russia-based Memorial-group and Human Rights Watch – an international NGO with researchers and reporters based both in Moscow and Chechnya. They collected a considerable amount of information, statements and testimony, but failed to indicate specific laws the dress code policy is based on. I found it obvious that Chechen authorities put some efforts in order to ‘popularize’ and spread Islamic morals and rules of behavior based on religious tenets in the republic. However, there is no clear evidence that they significantly outrun the limits of propagandistic influence and hurled their efforts to

the law-making field. It appears that no fundamental law applicable to all female residents of the republic was issued. The above mentioned edict № 04/27 appears to be more of recommendation nature *per se* however, may be used as a ‘tool’ for oppression, rather psychological than legal. At the same time, the regulation №168 can be challenged in court. Moreover, an issue of wearing hijabs in state educational institutions was already examined in the Supreme Court – a court of a highest instance. As to the second question, based on the research performed in the second chapter of the paper, I may conclude that the mandatory Islamic dress code policy cannot be regarded as lawful within a framework of the legislation of the Russian Federation. Firstly, it cannot be justified in a democratic society. As a state party to several fundamental international treaties, Russia is obliged to protect basic human rights and freedoms. Secondly, the Islamic dress code policy contradicts the domestic legislation which guaranteed a freedom of religion, right to a private life and non-discrimination. The edict № 04/27 in fact was issued outside the scope of authority of the ‘subject’ as it imposed obligations which can be imposed only at the federal level. Moreover, I argue that it is impossible to justify a mandatory religious dress code for state civil servants under Russian legislation. At the same time, the regulation №168 appears to be issued within the scope of authority of local government which has a right to adopt its own school uniform regulation, but contradicts the federal legislation *per se* as no religious dress code can be imposed on students of state educational institutions which aimed to guarantee secular nature of state education. These legal acts may be challenged in court.

At the same time I cannot leave out of consideration the fact that in secular countries or countries which guarantee basic human rights for its citizens a religious dress code rarely spreads openly, especially through some legal norms. Shadow oppression is more typical than attempts to fix *illegal* practice in *legal* norms. Thereby, a dress code in Chechnya may spread in a form of verbal orders with risk of being discharged from work, excluded from school (under plausible excuse, of course) or attacked on a street.

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Annex I



**АДМИНИСТРАЦИЯ
ГЛАВЫ И ПРАВИТЕЛЬСТВА
ЧЕЧЕНСКОЙ РЕСПУБЛИКИ**

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На № _____ от _____

Руководителям органов государственной
власти Чеченской Республики

Главам администраций муниципальных
районов и мэрам городских округов
Чеченской Республики

Напоминаю о необходимости неукоснительного исполнения поручения
Главы Чеченской Республики Р.А. Кадырова (совещание от 16 декабря
2010 года) о приведении формы одежды сотрудников ваших организаций в
соответствие с нормами служебной и вайнахской этики.

При этом рабочая форма сотрудников: костюм-галстук, в пятницу -
традиционная мусульманская форма одежды.

Рабочая форма сотрудниц: соответствующий головной убор, платье и
юбки - ниже колен, рукав - три-четверти длины руки.

С уважением,

Заместитель Председателя Правительства
Чеченской Республики - Руководитель
Администрации Главы и Правительства
Чеченской Республики

М.С. Селимханов